



Billing Code: 6560-50

ENVIRONMENTAL PROTECTION

AGENCY 40 CFR Part 52

[EPA-R08-0AR-2016-0014; FRL-9947-13-Region 8

Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Revisions to Wyoming Air Quality Standards and Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions submitted by the State of Wyoming on November 6, 2015. This submittal revises the Wyoming Air Quality Standards and Regulations (WAQSR) that pertain to the issuance of Wyoming air quality permits for major sources in nonattainment areas. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-0AR-2016-0014. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in

<http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, Mailcode SP-AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, or leone.kevin@epa.gov.

I. Background

In this final rulemaking, we are taking action to approve the addition of Chapter 6, Section 13, Nonattainment permit requirements, and updated Section 14, Incorporation by reference, Wyoming Air Quality Standards and Regulations (WAQSR) to the Wyoming SIP. These provisions were submitted by the Wyoming Department of Environmental Quality (WDEQ) on November 6, 2015, to address certain CAA requirements related to ozone nonattainment areas.

On March 27, 2008, the EPA promulgated a revised National Ambient Air Quality Standard (NAAQS) for ozone with an 8-hour concentration limit of 0.075 parts per million ("8-Hour Ozone NAAQS"). Effective July 20, 2012, the EPA designated the Upper Green River Basin (UGRB) area of Wyoming as "nonattainment" for the 8-Hour Ozone NAAQS. For nonattainment areas, states are required to submit SIP revisions, including a nonattainment NSR permitting program for the construction and operation of new or modified major stationary sources located in the nonattainment area.

On May 10, 2011, before the formal designation of the UGRB area as nonattainment

for the 8-Hour Ozone NAAQS, the WDEQ submitted a nonattainment new source review (NSR) permitting program SIP revision to EPA. This new section incorporated by reference 40 CFR

51.165 in its entirety, with the exception of paragraphs (a) and (a)(1), into Wyoming's Chapter 6

Permitting Requirements. On February 20, 2015 (80 FR 9194), the EPA took final action to disapprove the portion of Wyoming's May 10, 2011 submittal that added this new section to the permitting requirements in WAQSR Chapter 6. As explained in 80 FR 9194, the method Wyoming used to create a nonattainment NSR program was not consistent with the CAA and EPA regulations.

Our final disapproval started a two-year clock under CAA section 110(c)(1) for our obligation to promulgate a federal implementation plan (FIP) to correct the deficiency and the 18-month clock for sanctions, as required by CAA section 179(a)(2). These deadlines will be removed by the approval of this SIP revision addressing the deficiency in Wyoming's nonattainment NSR permitting requirements. Under section 110(c)(1), the EPA must promulgate a FIP addressing the deficiencies unless the state corrects the deficiencies, and the EPA approves the plan or plan revision, before the EPA promulgates the FIP. Under section 179(a), sanctions apply unless the deficiency has been corrected within 18 months. See also 40 CFR 52.31(d).

With our approval of the November 6, 2015 submittal, we are affirmatively determining that the deficiencies identified in our February 20, 2015 notice have been corrected, and as a result the deadlines for a FIP and sanctions have been removed.

The SIP revisions submitted by the WDEQ on November 6, 2015, involve Chapter 6, Permitting Requirements, Section 13, Nonattainment new source review permit requirements,

and Section 14, Incorporation by reference. The revisions to Section 13 establish specific nonattainment new source review permitting requirements. In Section 13, the WDEQ has incorporated federal regulatory language from 40 CFR 51.165 and reformatted it into state-specific language that effectively imposes requirements on major sources in Wyoming. Additionally, the WDEQ has revised language within the rule to maintain consistency with the State's Prevention of Significant Deterioration (PSD) regulations (WAQSR Chapter 6, Section 4). In addition to the revisions to Chapter 6, Section 13, the November 6, 2015, submittal also updates Chapter 6, Section 14, Incorporation by reference, to adopt by reference the CFR as published on July 1, 2014. The State previously submitted SIP revisions for Chapter 6, Section 14 on May 28, 2015 that requested adoption by reference of the CFR as published on July 1, 2013.

II. What are the Changes that EPA is Taking Final Action to Approve?

In our March 1, 2016 proposed action (81 FR 10559), we proposed to approve the following revisions to the WASQR: Chapter 6, Section 13, Nonattainment permit requirements, and updated Section 14, Incorporation by reference, WAQSR to the Wyoming SIP. As explained in 81 FR 10559, these changes are consistent with CAA and EPA regulations and address the deficiencies identified in our February 20, 2015 disapproval.

Instead of incorporating 40 CFR 51.165 by reference, the November 6, 2015 submittal adapts the language in 40 CFR 51.165 to remove phrases such as "the plan shall provide" and "the plan may provide ," and specifies the procedures to be used. In addition, the submittal revises language in 40 CFR 51.165 to specify that the WDEQ is the reviewing authority. In one place, the submittal modifies the term "building, structure, facility, or installation" to "structure,

building, facility, equipment, installation, or operation," without modifying the substance of the definition of the term, which is permissible. These changes are consistent with the CAA and EPA regulations. Specifically:

1. CAA section 110(a)(2)(C), requires each state plan to include "a program to provide for ... the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that the [NAAQS] are achieved, including a permit program as required in parts C and D of this subchapter."
2. CAA section 172(c)(5), provides that the plan "shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section [173]." By removing language such as "the plan shall provide," the submittal avoids any ambiguity as to whether permits are required.
3. CAA section 173, lays out the requirements for obtaining a permit that must be included in a state's SIP-approved permit program. Wyoming's Chapter 6, Section 13 rules impose these requirements on sources, and the State's proposed plan clearly satisfies the requirements of these statutory provisions.
4. CAA section 110(a)(2)(A), requires that SIPs contain enforceable emissions limitations and other control measures. Under section CAA section 110(a)(2), the enforceability requirement in section 110(a)(2)(A) applies to all plans submitted by a state. Chapter 6, Section 13 creates enforceable obligations for sources by removing phrases such as "the plan shall provide" and "the plan may provide."
5. CAA section 110(i), (with certain limited exceptions) prohibits states from modifying SIP requirements for stationary sources except through the SIP revision

process. By eliminating unspecified procedures that were referenced in the May 10, 2011 submittal, the November 6, 2015 submittal addresses this issue.

6. CAA section 172(c)(7), requires that nonattainment plans, including nonattainment NSR programs required by section 172(c)(5), meet the applicable provisions of section 110(a)(2), including the requirement in section 110(a)(2)(A) for enforceable emission limitations and other control measures.
7. CAA section 110(1), provides that EPA cannot approve a SIP revision that interferes with any applicable requirement of the Act. As described above, the addition of Chapter 6, Section 13 to the Wyoming SIP would not interfere with sections 110(a)(2) and 110(i) of the Act.
8. Wyoming's SIP revision complies with the requirements of 40 CFR 51.165 as the plan imposes the regulatory requirements on individual sources, as required by the regulatory provisions. The crosswalk table in the docket details how the submittal addresses specific requirements in 40 CFR 51.165.

Wyoming's submittal also addresses the potential conflicts with the State's approved minor NSR and PSD programs that existed in the May 5, 2011 submittal. First, Section 13(c)(i) provides that the exemptions in the minor NSR program (Section 2(k)) shall not apply with regards to applicability of the nonattainment NSR program. Second, Section 13(d)(iv) states that lowest achievable emissions rate (LAER), not best available control technology (BACT), applies to sources subject to nonattainment NSR. Finally, Section 13(f)(iii) clarifies that Section 13 does not apply in the Sheridan PM₁₀ nonattainment area; instead the construction ban in Section 2(c)(ii)(B) continues to apply. We also note that Wyoming will have permitting authority for new major sources and major modifications in the Sheridan

coarse particulate matter (PM₁₀) nonattainment area, if Wyoming submits and we approve the removal of the construction ban from the SIP. Wyoming has had a construction ban in place and approved into the SIP for over 20 years (See WAQSR, Chapter 6, Section 2(c)(ii)(B)).

EPA's final approval of Wyoming's nonattainment permitting program allows Wyoming to apply WAQSR Chapter 6, Section 13 as permitting authority in the UGRB ozone nonattainment area for new major sources and major modifications of nitrogen oxide (NO_x) and volatile organic compounds (VOCs) as ozone precursors.

Finally, as explained in our proposal notice, the November 6, 2015 submittal treats sulfur dioxide (SO₂) as a precursor to PM_{2.5}, and presumes that NO_x is also a precursor to PM_{2.5}. The State of Wyoming has no nonattainment areas for the PM_{2.5} standards. Accordingly, the EPA finds it reasonable to conclude that major sources of VOCs and ammonia do not contribute significantly to PM_{2.5} nonattainment within the State. Thus, there is no need at this time for the State to regulate VOCs or ammonia as PM_{2.5} precursors in the State's nonattainment NSR permitting program, and so we are approving the submittal's PM_{2.5} precursor provisions. Should the EPA in the future designate an area in Wyoming as nonattainment for PM_{2.5}, the State would have the obligation to ensure that the nonattainment NSR program met all applicable requirements for PM_{2.5}, including appropriate control of precursors. See CAA sections 172(c)(5) and 189(a)(1)(A).

We provided a detailed explanation of the basis of approval in our proposed rulemaking (see 79 FR 65362). We invited comment on all aspects of our proposal and provided a 30-day comment period. The comment period ended on March 31, 2016.

III. Response to Comments

We received one comment letter during the public comment period. The comment letter was submitted by Nancy E. Vehr, Air Quality Division (AQD) Administrator for the State of Wyoming.

Comment:

The comment expresses the AQD's support for the EPA's proposed approval of the addition of Chapter 6, Section 13, Nonattainment permit requirements, and updated Section 14, Incorporation by reference, WAQSR to the Wyoming SIP.

Response:

We have received the comment and acknowledge the support.

IV. What Action is EPA Taking Today?

The EPA is taking final action to fully approve Wyoming's November 6, 2015, submittal. As discussed in our proposal and this notice, our action is based on an evaluation of Wyoming's rules against the requirements of CAA sections 110(a)(2)(C), 110(a)(2)(A), 110(i), 110(1), 172(c)(5), 172(c)(7), 173, and regulations at 40 CFR 51.165.

As described in our proposed rulemaking, and in Section II of this notice, the EPA is

approving the addition of Chapter 6, Section 13, Nonattainment new source review permit requirements, and updated Section 14, Incorporation by reference, WAQSR to the Wyoming SIP submitted by Wyoming on November 6, 2015. We are also determining that the November 6, 2015 submittal addresses the deficiencies identified by the EPA in Wyoming's prior submittal of Section 13; as a result the deadlines for a FIP and sanctions are removed.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference.

In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the WDEQ rules as described in the amendments to 40 CFR part 52 set forth in this document. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

VI. Statutory and Executive Orders Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact in a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: May 11, 2016.

Shaun L. McGrath,
Regional Administrator,
Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority for citation for part 52 continues to read as follows: Authority: 42 U.S.C. 7401 et seq.

Subpart ZZ - Wyoming

2. In § 52.2620, in the table in paragraph (c), under "Chapter 06. Permitting Requirements." add an entry for "Section 13" and revise the entry for "Section 14" to read as follows:

§ 52.2620 Identification of plan.

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(c) * * *

Rule No.	Rule title	State effective	EPA Effective date	Final rule citation /date	Comments
Chapter 06. Permitting Requirements.					
* * * * *					
Section 13	Nonattainment new source review permit requirements.	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[insert <u>date of</u> publication in the Federal Register] [insert Federal Register citation]	

Section 14	Incorporation by reference.	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[<u>insert date of publication</u> in the Federal Register] [insert Federal Register citation]	
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[FR Doc. 2016-12725 Filed: 6/1/2016 8:45 am; Publication Date: 6/2/2016]